IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE C.N.RAMACHANDRAN NAIR
&
THE HONOURABLE MR. JUSTICE K.M.JOSEPH

THURSDAY, THE 9TH NOVEMBER 2006 / 18TH KARTHIKA 1928

ST.Rev..No. 374 of 2005()

TA.478/2000 of STAT ADDL.BENCH, KOTTAYAM
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PETITIONER/APPELLANT.

K.R.SWAMINATHAN, PROPRIETOR,
CROWN SHOW DECROATORS, EZHUPUNNA,
ALAPPUZHA DISTRICT.

BY ADV. SRI.V.P.SUKUMAR
SRI.KURYAN THOMAS

RESPONDENTS: RESPONDENT.

STATE OF KERALA, REPRESENTED BY THE
CHIEF SECRETARY, SECRETARIAT,
THIRUVANANTHAPURAM.

BY GOVERNMENT PLEADER SRI. GEORGEKUTTY MATHEW

THIS SALES TAX REVISION HAVING BEEN FINALLY HEARD ON 09/11/2006 THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

C.N.RAMACHANDRAN NAIR &
K.M.JOSEPH, JJ.

S.T.Rev. NO.374 OF 2005

Dated this the 9th day of November, 2006

JUDGMENT

Ramachandran Nair,J.

Heard counsel for the petitioner and Government Pleader. The assessment confirmed by the Tribunal is for the year 1994-95. Petitioner, though not a registered dealer, was engaged in aluminium fabrication work. During inspection in the business premises conducted on 28.7.1994, substantial stock of materials were found based on which turnover was estimated and assessed. All the authorities, including the appellate Tribunal, held against the petitioner and hence this Revision against the order of the Tribunal.

2. Counsel for the petitioner contended that petitioner is engaged in pure labour contract and materials are always procured by the persons for whom work is executed. In fact copies of some bills are produced in court. However, it is seen from Annexure I that no bills were produced nor is there any works contract bill produced at the

time of inspection and therefore department assumed the goods as belonging to the petitioner. We do not think there is any scope for our reversing the concurrent findings of fact entered by three lower authorities about the sale of materials by the petitioner, whether as trader or in the course of execution of work. However, we find that assessment under Section 5A of the KGST Act is not justified as the assessment is treating the petitioner as a trader and not as works contractor engaged in manufacture of any goods. We therefore delete the assessment of turnover under Section 5A confirmed by the Tribunal. Moreover, the very case of the department is that the items purchased are for resale and so much so tax under Section 5A is not payable. The Tribunal's order is modified to the above extent.

ST Rev. is disposed of as above.

(C.N.RAMACHANDRAN NAIR)
Judge

(K.M.JOSEPH)
Judge